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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PATRICK RAMIREZ

Petitioner

v.

STATE OF INDIANA

Respondent

On Writ Of Certiorari To
The Court Of Appeals Of Indiana

REPLY BRIEF FOR PETITIONER

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STATUTES:

Interstate Agreement on Detainers (IAD):
Indiana Code § 35-33-10-4:

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MISCELLANEOUS:

Sup. Ct. R. 34.1(a) 1n

Introduction

The position of the State of Indiana in its brief emphasizes starkly why the judgment of the Court of Appeals of Indiana must be reversed. In the State's view, despite its voluntary adherence to this interstate agreement, and despite this Court's decision in *Cuyler* v. *Adams*, 449 U.S. 433 (1981), the Interstate Agreement on Detainers (IAD) is "nothing more than a set of procedural rules" (Resp. Br. 12) to be interpreted by individual state courts without any concern for the needs of interstate federalism which led to its adoption. As we emphasized in our principal brief, such an interpretation cannot be squared with the text of the IAD or with the prior decisions of this Court.

In the following paragraphs, we shall briefly examine the principal areas where Indiana's failure to recognize its obligations to the other signatory states has resulted in a misinterpretation of the IAD.

Cuyler v. *Adams* Should Not Be Overruled

In its attempt to characterize the IAD as a simple state procedural rule rather than an interstate compact, the State goes far beyond the Question Presented[1] and devotes a substantial part of its presentation to urging that this Court overrule its recent ruling in *Cuyler*.[2] This amounts to nothing more than an untimely petition for rehearing in that case. "[A]ny departure from the doctrine of *stare decisis* demands special justification." *Arizona* v. *Rumsey*, 104 S. Ct. 2305, 2311 (1984). Indiana presents no arguments which were not considered by this Court in *Cuyler*. Nor does it suggest that the post-*Cuyler*

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[1] *Sup. Ct. R.* 34.1(a).

[2] We are at a loss as to why the State contends that the writ ought to be dismissed as improvidently granted when it is also arguing that the Court should overrule *Cuyler*.

experience of the states demonstrates that this Court was in error.[3]

Indeed, respondent's argument that *Cuyler* be overruled and that Indiana has no interstate obligations other than those of its own choosing appears to be the lynchpin of its entire position. For instance, one would expect that, after having argued that the Court should admit that it erred in *Cuyler*, the State would proceed, by way of alternative argument, to deal squarely with the key provisions of the IAD. However, throughout Indiana's brief, there continues a marked lack of concern for the obligation which it freely undertook toward the other forty-seven states (and the federal government) when it entered the interstate agreement. The State complains that interstate agreements such as this one "impinge[] upon state sovereignty." (Resp. Br. 10) It avoids, however, any significant analysis of the key provisions of the IAD which foster interstate cooperation.

Respondent Makes No Serious Attempt To Reconcile Its Position With The Provisions Of Section 5(g)

The most striking omission in the State's brief is its failure to confront seriously the plain language of section 5(g):

> For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in *the custody of and subject to the jurisdiction of the sending state.*
>
> (emphasis added)

As we pointed out in our principal brief (Petr. Br. 21 et. seq.), in the absence of the IAD, Indiana might well have

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[3] We note, for example, that since this Court's ruling in *Cuyler*, no state has withdrawn from the Agreement on the ground that interpretation of the IAD as a matter of federal law will, as respondent suggests, impinge on its sovereignty. (Resp. Br. 10)

been able to try the petitioner when it did under the rule of *Frisbie* v. *Collins*, 342 U.S. 519 (1952), and *Ker* v. *Illinois*, 119 U.S. 436 (1886), or under the theory of continuing jurisdiction suggested by respondent. (Resp. Br. 12) However, at the time of trial, Indiana's custody of petitioner was under the special provisions of the IAD. Petitioner was "on loan" from the State of Michigan and, under the Agreement, the "loan" was solely for the purpose of trial on Cause 470.

Whatever may have been the authority of Indiana to try the petitioner under other circumstances, its authority was restricted as long as the petitioner was in Indiana "only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of [sic] complaints which form the basis of the detainer. . . ." Art. § 5(d).

There is no question as to the applicability of the IAD. *Cf. Gottfried* v. *Cronin*, 192 Colo. 25, 27-28, 555 P.2d 969, 970-71 (1976); *State* v. *Clark*, 222 Kan. 65, ____, 563 P.2d 1028, 1030 (1977).[4] Nor, as the State concedes, is there any question that there was a violation of the IAD. (Resp. Br. 5) The only issue before the Court is whether the state trial court was, despite the existence of section 5(g), authorized to try the petitioner for Cause 424 while he was in Indiana under the IAD solely for trial on Cause 470. The trial court, having been placed on notice that proceeding to trial under Cause 424 was violative of the IAD, could have taken appropriate steps to ensure that the petitioner and the Governor of Michigan were given an appropriate opportunity to exercise their respective rights under the IAD. Petitioner submits that it was error for the trial court to proceed over his objection.

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[4] In these cases, as here, preliminary proceedings against the defendant had taken place previously in the demanding state, and the IAD was used to secure his return.

Respondent Has Failed To Recognize That, Under The IAD, Both Michigan And The Petitioner Also Have Protected Interests

Indiana's preoccupation with its own self-interest has also caused it to disregard in its analysis the interests of both its sister state and the petitioner. As we have noted in our principal brief, the petitioner had the right to convince the Governor of Michigan that he ought not be returned to Indiana on Cause 424. The Governor had the right to consider that request.[5] Neither was able to exercise his right.

Indeed, contrary to this Court's decision in *Cuyler*, Indiana largely ignores the fact that the IAD deals with two very distinct situations which implicate, in very different ways, the interests of the demanding state, the asylum state and the prisoner.[6] (Resp. Br. 14) *See Cuyler* v. *Adams*, 449 U.S. 433, 444 (1981). In situations under Article 3, where the prisoner is anxious to dispose of an outstanding detainer by insisting on his right to a speedy trial, it made good sense to provide specifically that failure to bring him to trial on all outstanding detainers within the demanding state would result in dismissal of

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[5] The State suggests—principally through its frequent citation of § 9(7)—that Michigan was at least partially at fault in misinforming the petitioner. It is clear, however, that the relevant misinformation was generated by Indiana—not Michigan—officials. (Resp. Br. 2) In any event, we are at a loss to see how any fault on Michigan's part (assuming arguendo that it did exist) would excuse the trial court from disregarding the clear mandate of § 5(g).

[6] As the United States Court of Appeals for the Seventh Circuit noted in a civil action arising out of this same transaction, the IAD does treat cases arising under Article 3 differently than those arising out of Article 4. Indeed, it was on this basis that the Court of Appeals found an "arguable violation" of the petitioner's rights. *Ramirez* v. *Bough*, No. 83-2702 (7th Cir. August 22, 1984) (unpublished), *petition for cert. filed*, 55 U.S.L.W. 3530 (U.S. Dec. 19, 1984) (No. 84-1013).

the underlying charges. In situations such as the present one, where the demanding state, not the prisoner, has initiated the demand for trial, it also makes sense to require that, if the prisoner is returned to the demanding state, it must try the prisoner expeditiously or suffer dismissal. Art. §§ 4(c),(e). One can hardly fault the drafters for not having provided explicitly for a remedy when the demanding state attempts to try a prisoner on a charge not mentioned in the detainer. Section 5(g) gives satisfactory direction: the "asylum" state maintains custody; the prisoner may not be tried.

Conclusion

Respondent urges this Court to avoid a decision which will "make states reluctant to enter into such agreements" as the IAD. However, it also insists that states ought not be held to the plain meaning of such agreements and, indeed, ought to be free to regard any substantive provision as a "technicality." (Resp. Br. 14) Such an approach is simply incompatible with the role which the interstate agreement was intended to play in the preservation of our federalism. States must be able to rely on their agreements if they are to work together and retain the initiative in resolving common problems. By working through such arrangements, states retain their sovereignty rather than lose it through the imposition of federal control. However, the agreements must mean what they say—and states must conform their conduct to the bargain.

Accordingly, petitioner respectfully prays that the judgment of the Court of Appeals of Indiana be reversed.

Respectfully submitted,

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